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NO. 90-107

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

COURIER-JOURNAL and LOUISVILLE TIMES CO, et. al.

Petitioners

versus

F.T.P., REAL PARTY IN INTEREST and
HON. ROBERT DELAHANTY

Respondents

F.T.P.'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

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CERTIFICATE

I hereby certify that copies of this brief were deposited in the U.S. Mail, first-class postage prepaid, properly addressed to Mr. Jon Fleischaker and Mr. William Hollander, Wyatt, Tarrant & Combs, Citizens Plaza, Louisville, Kentucky 40202; and Mr. Greg Holmes, Assistant Attorney General, Capitol Building, Frankfort, Kentucky 40601, on August 15, 1990.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, § 2, Constitution of the United States

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority; ***

28 U.S.C. § 1257(a)

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Portions of Kentucky's Unified Juvenile Code [Ky.Rev.Stat. Ch. 600 et seq.], cannot be set out conveniently at this point. Photocopies of the statutes cited to are found in the Appendix to this brief which follows immediately after the Conclusion.

SUMMARY OF ARGUMENT

Petitioners do not show the existence of a First Amendment right of access to hearings and records of the juvenile court proceedings authorized by the Kentucky Unified Juvenile Code of 1986. Because this is true, this Court does not have jurisdiction to grant relief. [28 U.S.C. § 1257(a)].

This Court has established a method of analysis that focuses on the particular circumstances of the proceedings or records to which access is sought. In The Florida Star v. B.J.F., 491 U.S. ____ (1989), the Court specifically held that it would not create expansive First Amendment rights of access. Rather, the Court held that the analysis would "sweep no more broadly" than necessary in the case under examination. When the Press-Enterprise II [Press-Enterprise v. Superior Court, 478 U.S. 1 (1986)], tests of historical tradition and beneficial effect of access is applied with the B.J.F. limiting principle in mind, it is plain that petitioners do not make out a valid First Amendment claim for access.

The Kentucky Unified Juvenile Code of 1986 is a comprehensive statutory revision and codification of all Kentucky laws pertaining to minors. One of the hallmarks of the new Code is confidentiality of proceedings and records. This concern with confidentiality is a continuation of Kentucky's public policy of exclusion of the general public which has existed from the enactment of Kentucky's first juvenile statute in 1906. The goal and the purpose of the Unified Juvenile Code are to strengthen families, to afford treatment and rehabilitation to juveniles who

break the law, and to assure that treatment does not take the child out of his family environment unless there is no alternative. The purpose of confidentiality has been and is to assist in the treatment and rehabilitation of the juvenile. Petitioners do not show specifically how access by the public and press would improve the function of the state district courts in their application of the Unified Juvenile Code. This Court has always hesitated to interfere with court systems of the states and has specifically encouraged states to create confidential juvenile court schemes. [Application of Gault, 381 U.S. 1, 25 (1967)]. Failure of petitioners to show how press access to juvenile records and proceedings would affect Kentucky's system positively, coupled with the failure to show a tradition of openness in juvenile courts, means that no First Amendment right of access exists. Thus, the court has no jurisdiction to grant relief.

Even if the court finds such a First Amendment right, under the present posture of the case, access should be denied. Kentucky has not yet decided whether F.T.P. should be transferred to circuit court for trial as an adult. Until Kentucky decides to do so, F.T.P. should have the benefits of the Unified Juvenile Code and the state should retain confidentiality to assist in rehabilitation and treatment of F.T.P. if he remains in the juvenile system. Thus, the petition should be denied.

ARGUMENT

PETITIONERS DO NOT ESTABLISH A FIRST AMENDMENT CLAIM OF ACCESS TO JUVENILE COURT RECORDS. THEREFORE, PETITIONERS DO NOT PRESENT A QUESTION OF FEDERAL CONSTITUTIONAL LAW SUFFICIENT TO INVOKE THE JURISDICTION OF THIS COURT UNDER 28 U.S.C. § 1257.

Petitioners start their argument by assuming that there is a First Amendment right of access to any court proceeding anywhere in the United States. In support of this position they cite a number of cases decided by this Court since 1980 that establish the right of the public and the press to attend adult criminal trials and proceedings ancillary thereto. (Petition for Writ, p. 10-14). However, petitioners overlook this Court's more recent decisions which describe a step-by-step, case-by-case approach to determination of the First Amendment right of access to court proceedings. Reference to this Court's decisions in Branzburg v. Hayes, 408 U.S. 665 (1972), Press-Enterprise v. Superior Court, 478 U.S. 1 (1986) and The Florida Star v. B.J.F., 491 U.S. ____, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989) shows that this Court has never declared a blanket First Amendment right of access to court proceedings. Rather, as shown by these cases and others, the Court has examined carefully the circumstances of each situation presented to it, and has taken care not to establish a right of access greater than that necessary to insure protection of the rights of all parties in each situation. Under this approach, it is clear that petitioners have not established a First Amendment right of access in this case, and therefore, cannot invoke the jurisdiction of this Court. [Article III, Constitution of the

United States; 28 U.S.C. § 1257(a)]. In this response, F.T.P. will demonstrate that no right of access exists. Even if such a right is assumed, it is clear that the interests of F.T.P. and of the Commonwealth of Kentucky outweigh the interests of petitioners under a qualified First Amendment right of access at this stage of F.T.P.'s case. The Court will see that no useful purpose will be served in granting the writ in this case, and therefore the Court should deny the petition.

(A) Establishment of First Amendment Right of Access.

In Branzburg v. Hayes, 408 U.S. 665 (1972) the Court noted that news gathering qualifies for "some protection" but that "it is clear that the First Amendment does not invalidate every incidental burdening of the press that may result from the enforcement of civil or criminal statutes of general applicability. [408 U.S. at 681-682]. This rule obtains because, as the Court noted in Branzburg, "it has generally been held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally." [408 U.S. at 684]. Therefore, the Court has taken a cautious approach toward establishing First Amendment rights of access to particular proceedings of the state courts. This approach was commented on first in Waller v. Georgia, 467 U.S. 39 (1984). Although Waller was a Sixth Amendment case, the Court had occasion to comment on its First Amendment jurisprudence. In Waller, the Court noted that in a number of cases the Court had "extended" the right to various aspects of adult criminal court

trials. [467 U.S. at 44-45]. The Court explained this approach more explicitly in The Florida Star v. B.J.F., 491 U.S. ____, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989). B.J.F. involved a prior restraint claim growing out of a tort suit for invasion of privacy. In response to a claim that truthful publication may never be punished, the Court stated that

> "our cases have carefully eschewed reaching this ultimate question, mindful that the future may bring scenarios which prudence counsels our not resolving anticipatorily. *** We continue to believe that the sensitivity and significance of the interests presented in clashes between First Amendment and privacy rights counsel relying on limited principles that sweep no more broadly than the appropriate context of the instant case. [B.J.F., 491 U.S. at ____, 105 L.Ed.2d at 455].

Thus, the so-called Press-Enterprise II test, set out in Press-Enterprise v. Superior Court, 478 U.S. 1 (1986), is designed to determine the existence of a "qualified" First Amendment right of access based on the circumstances presented by the "instant case". That test has since become well known.

> "[I]n cases dealing with the claim of a First Amendment right of access to criminal proceedings, our decisions have emphasized two complementary considerations. ***
>
> . . . We have considered whether the place and process have historically been open to the press and general public ***
>
> Second, in this setting the Court has traditionally considered whether public access plays a significant positive role in the functioning of the particular process in question. ***
>
> If the particular proceeding in question passes these tests of experience and logic, a qualified First Amendment right of public access attaches. [478 U.S. at 8-9].

It is only after the moving party establishes the existence of the "qualified" First Amendment right that the state court or the opposing party must articulate the existence of a higher countervailing interest and tailor the closure order narrowly to serve only that interest. [478 U.S. at 9-10]. The facts of this case show that neither prong of the Press-Enterprise II test has been met by petitioners, and therefore, there is no First Amendment right of access to juvenile court proceedings or juvenile court records established by the laws of Kentucky.

(B) Have Juvenile Court Proceedings Traditionally Been Open to the Public?

Petitioners rely heavily on the fact that before the creation of juvenile courts, any person over the age of 7 could be convicted of a crime and subjected to adult criminal sanctions. (Petition, p. 15). On page 16 of the petition, petitioners correctly note that juvenile courts, as distinctive organs of government, came into existence only around the turn of this century. Kentucky first enacted a separate juvenile court statute in 1906. [Kentucky Acts, 1906 Regular Session, Chap. 64]. A separate juvenile court has existed in Kentucky since 1906, the most recent court being organized under the Unified Juvenile Code, Ky.Rev.Stat. Ch. 600 et seq. The hallmark of each new manifestation of the juvenile court statutes has been an emphasis on closure of proceedings and confidentiality of records. These two features are embodied in Ky.Rev.Stat. 610.070(3) and 610.340(1) of a current Unified Juvenile Code. This emphasis on

confidentiality was no doubt fostered by the decision in Application of Gault, 387 U.S. 1, 25 (1967) where the Court encouraged the states, consistent with due process, and if the state deemed it appropriate, "to provide and to improve provision for the confidentiality of records of police contacts and court action relating to juveniles." Kentucky has seen fit to maintain confidentiality in order to achieve the purposes of treatment and rehabilitation, which purposes will be discussed in the next section of this argument. At this point however, it is important to note that this Court has never voiced an objection to confidentiality of juvenile proceedings or records as long as the state has provided minimal due process protection for the child. This is because the state has a parens patriae interest in preserving and promoting the welfare of children. [Schall v. Martin, 467 U.S. 253, 263 (1984)]. A juvenile's "liberty interest" may in appropriate circumstances "be subordinated to the State's parens patriae interest in preserving and promoting the welfare of the child." Thus, in Schall, the Court upheld a New York state statute authorizing preventive detention of juveniles. Put simply, the Court has recognized and has encouraged special, and more lenient, treatment for juveniles. [Gault, cited above; Kent v. United States, 383 U.S. 541 (1966)]. As noted in Kelly v. Robinson, 479 U.S. 36, 47 (1986) "the right to formulate and enforce penal sanctions is an important aspect of the sovereignty retained by the States." Each state has an interest in "unfettered administration of [its] criminal justice system." [479 U.S. at 44]. By enacting a juvenile court statute, the General Assembly of

Kentucky has decriminalized behavior of persons under the age of 18. Obviously, if the common law could fix the age of criminal responsibility at seven years, a state legislature can, by positive enactment, decide that the age of criminal responsibility, (with certain exceptions) should be 18. [Mack, The Juvenile Court, 23 Harv. Law Rev., 104 (1909) reprinted in Faust and Bingham, Juvenile Justice Philosophy, 2nd Ed., p. 101 (West, 1979)]. In Kentucky, the common law of crimes has been abolished. [Ky.Rev.Stat. 500.020(1)]. The criminal law of Kentucky is entirely statutory. And, with few exceptions,

> ". . . the juvenile session of the district court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his 18th birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years . . .". [Ky.Rev.Stat. 610.010(1)].

The Unified Juvenile Code was enacted by the General Assembly of Kentucky to effectuate certain legislative purposes, chief among which are the treatment and rehabilitation of juveniles. [Ky.Rev.Stat. 600.010]. To protect the child, the General Assembly made all protections afforded under the Unified Juvenile Code those of the child. Unless otherwise specifically stated, these protections may not be waived by any other person. [Ky.Rev.Stat. 600.010(2)(e)]. It is therefore clear that the first prong of the Press-Enterprise test cannot be met. A juvenile proceeding under the Unified Juvenile Code of 1986 is not an adult criminal proceeding. The purpose of the Unified Juvenile Code is to strengthen and encourage family life "for the protection and

care of children", and to offer "all available resources to any family in need of them." Children may not be removed from their families "except when absolutely necessary" and only upon showing by the district court that "other less restrictive alternatives have been attempted or are not feasible . . .". [Ky.Rev.Stat. 600.010(2)(a); (c)]. To effect these purposes, Kentucky has always maintained a policy of confidentiality and closure of proceedings. [e.g., Johnson v. Simpson, Ky., 433 S.W.2d 644, 647 (1968); F.T.P. v. Courier-Journal, Ky., 774 S.W.2d 444 (1989)]. As noted in F.T.P. v. Courier-Journal,

> "The purpose of the shroud of secrecy and confidentiality mandated by the above cited statutes is to protect the juvenile. Clearly this purpose was uppermost in the minds of the General Assembly. It was intended that trials of juveniles not be publicized in the news media, as such publicity would possibly deprive the juvenile of a fair trial and, more particularly, would likely diminish his or her prospect for rehabilitation. To exclude the press at the district level, but admit them at the appellate level would tend to nullify the original intent and the purpose of the legislature and the wholesome policy of the Uniform Juvenile Act." [F.T.P. v. Courier-Journal, 774 S.W.2d at 446].

Petitioners can make no showing that juvenile court hearings traditionally have been open to the public. The cases petitioners cite on pages 16-17 and 23-24 of their petition simply show that there is a difference of opinion about the wisdom of confidentiality. Therefore, petitioners have failed to meet the first portion of the Press-Enterprise II test.

(C) **Would Public Access Play a Significant Positive Role in the Functioning of Juvenile Court Proceedings?**

In the preceding argument, F.T.P. mentioned the interest of the states in "unfettered administration of their criminal justice systems." [Kelly v. Robinson, 479 U.S. 36, 44 (1986)]. This Court has hesitated to interfere with state court proceedings except where the proceedings interfere with fundamental rights. [Spencer v. Texas, 385 U.S. 554 (1967)]. Respondent F.T.P. also has statutory rights arising out of the Unified Juvenile Code. [Ky.Rev.Stat. 600.010(2)(e)]. These rights include the right to treatment [Ky.Rev.Stat. 600.010(2)(d)]. F.T.P., under the Unified Juvenile Code, has the right if necessary, to a formal hearing from which the general public shall be excluded. [Ky.Rev.Stat. 610.070(3)]. He has the right to insist on confidentiality of court records [Ky.Rev.Stat. 610.340(1)] and to move for expungement after his course of treatment has been completed. [Ky.Rev.Stat. 610.330(1)]. Information supplied by a child to a court-designated worker before the filing of a petition is deemed confidential and cannot be disclosed without the written consent of the child. [Ky.Rev.Stat. 630.060(1)]. Upon adjudication, a child has the right to insist that a court first determine that all appropriate remedies have been considered and exhausted to assure that the least restrictive alternative method of treatment is utilized. [Ky.Rev.Stat. 600.010(2)(c)]. An adjudication by the juvenile court is not a conviction of crime, and does not impose any civil disabilities. Thus, under the Unified Juvenile Code, no child can be found guilty of a crime or be deemed a criminal by reason of an

adjudication under the Code. [Ky.Rev.Stat. 635.040]. Obviously, the Unified Juvenile Code is one that is directed primarily toward treatment of the juvenile offender. Although there are some provisions for formal adversary-type hearings [Ky.Rev.Stat. 610.070(2); 610.060], the Code is directed toward treatment. Adjudication serves merely as a predicate step to assure that the child is not subjected to discipline or treatment unfairly or unnecessarily. Against these interests, petitioners claim a "right to know" and cite some authorities to the effect that juvenile courts might do a better job if subjected to scrutiny. (Petition, p. 17-21). Petitioners do not deal with the specifics of the Unified Juvenile Code and offer no information about how well the district courts of Kentucky apply the provisions of the Code. F.T.P. agrees that this Court has more than once expressed unhappiness with the manner in which the practice in juvenile court diverges from the theory. [Application of Gault, 387 U.S. 1, 18-20 (1967)]. But, in the absence of specific evidence of wrongdoing or misapplication of juvenile statutes or infringement of the child's fundamental rights, this Court has not yet interfered with the operation of juvenile court systems in any state. [e.g., Schall v. Martin, 467 U.S. 253 (1984)]. In the absence of a more definite showing by petitioners of some particular evil, either in the operation of Kentucky courts under the Unified Juvenile Code, or of juvenile courts in general, petitioners cannot show a significant positive role in the functioning of the particular process. Therefore, petitioners fail to meet the second part of the Press-Enterprise test.

(D) Proper Disposition of This Petition.

In this petition, the Courier-Journal and its reporter seek access to juvenile court records. These records are confidential pursuant to Ky.Rev.Stat. 610.340(1). The record of the hearing on the issue of constitutionality of the previous transfer statute is necessarily confidential as well. The Court of Appeals of Kentucky was required to uphold these statutes because of the earlier decision by the Supreme Court of Kentucky in F.T.P. v. Courier-Journal, et al., Ky., 774 S.W.2d 444 (1989). In that opinion the Supreme Court of Kentucky noted that F.T.P. is still entitled to the protection of the Unified Juvenile Code. It may be that this case will ultimately be transferred to the circuit court for trial. If and when that occurs F.T.P. will then be stripped of the protection afforded by these statutes and will be treated as an adult, but until that happens the courts of Kentucky must comply with the law as written by the General Assembly and exclude the public and the press from all proceedings, both at the district and appellate level. [774 S.W.2d at 446]. Rule 1.300(8)(a) of the Rules of the Supreme Court of Kentucky required the Court of Appeals to follow the precedent established in the opinion of the Supreme Court of Kentucky. However, the exclusion of the public and the press is the right decision at this time. The transfer hearing still has not occurred. And in order to protect F.T.P.'s right to a fair trial, ". . . and the public's interest in fostering opportunities for rehabilitation" the press should be excluded from Juvenile Session proceedings at this time. Petitioners have failed to meet either prong of the Press-

Enterprise II test. That test is conjunctive, and failure to meet either means that petitioners have failed to establish a First Amendment right of access. Absent such a right, this Court has no jurisdiction to decide this case because there is no federal constitutional issue. [28 U.S.C. § 1257(a)]. Even if such a right is assumed to be shown, it is clear that the equities weigh in favor of exclusion at this point. F.T.P. has an interest in keeping his name out of the newspaper. The Unified Juvenile Code gives him that right and that expectation. The Commonwealth of Kentucky has the right to "foster opportunities for rehabilitation" and to conduct its justice system in the manner that seems best under the circumstances prevailing in Kentucky. Against these rights, petitioners posit some generalized notions that the press can help keep the court system honest. While this is true in a general sense, it is not a sufficient reason to strip F.T.P. of his confidentiality protections and to interfere with the state's attempt at rehabilitation. As noted in F.T.P. v. Courier-Journal, it may be that ultimately F.T.P. will be transferred to the circuit court for trial. At that point, he will be "stripped of the protection afforded by the statute and will be treated as an adult". [774 S.W.2d at 446]. But until that time, both F.T.P. and the state should be allowed to proceed under a well-thought out system in which petitioners have shown no flaw. Therefore, the Court is urged to deny the Petition for Writ of Certiorari.

CONCLUSION

For the reasons set out above, the Court is urged to deny the Petition for Writ of Certiorari filed on behalf of the Courier-Journal and Louisville Times and Kay Stewart.

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600.010 Title and intent of KRS Chapters 600 to 645

(1) KRS Chapters 600 to 645 shall be known as the Kentucky Unified Juvenile Code.

(2) KRS Chapters 600 to 645 shall be interpreted to effectuate the following express legislative purposes:

(a) The Commonwealth shall direct its efforts to the strengthening and encouragement of family life for the protection and care of children; to strengthen and maintain the biological family unit; and to offer all available resources to any family in need of them;

(b) It also shall be declared to be the policy of this Commonwealth that all efforts shall be directed toward providing each child a safe and nurturing home;

(c) The court shall show that other less restrictive alternatives have been attempted or are not feasible in order to insure that children are not removed from families except when absolutely necessary;

(d) Any child brought before the court under KRS Chapters 600 to 645 shall have a right to treatment reasonably calculated to bring about an improvement of his condition; and

(e) It shall further be the policy of this Commonwealth to provide judicial procedures in which rights and interests of all parties, including the parents, are recognized and all parties are assured prompt and fair hearings. Unless otherwise provided, such protections belong to the child individually and may not be waived by any other party.

HISTORY: 1986 c 423, § 1, eff. 7-1-87

610.010 District court jurisdiction of juvenile matters

(1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the district court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly:

(a) Has committed a public offense prior to his eighteenth birthday, except a moving motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that he has committed a moving motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him as an adult. A child taken into custody upon the allegation that he has committed a moving motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his appearance before the district court, in a secure juvenile detention facility or a juvenile holding facility or, if neither is available, in an intermittent holding facility. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a moving motor vehicle offense shall, if sentenced to a term of confinement, be placed in a secure juvenile detention facility or a juvenile holding facility. The term "moving motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent, nor any offense which constitutes a felony;

(b) Has not subjected himself to the reasonable control of his parent or guardian, school personnel or other person exercising custodial control or supervision of the child;

(c) Is an habitual truant from school;

(d) Is an habitual runaway from his parent or other person exercising custodial control or supervision of the child;

(e) Is dependent, neglected, or abused; or

(f) Is mentally ill.

(2) Actions brought under subsection (1)(a) of this section shall be considered to be public offense actions.

(3) Actions brought under subsection (1)(b), (c), and (d) of this section shall be considered to be status offense actions.

(4) Actions brought under subsection (1)(e) of this section shall be considered to be dependency actions.

(5) Actions brought under subsection (1)(f) of this section shall be considered to be mental health actions.

(6) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus, or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of circuit courts over adoptions and proceedings for termination of parental rights. The court shall have no jurisdiction to make permanent awards of custody of a child, but if the court finds an emergency to exist affecting the welfare of a child, it may make temporary orders for his custody, however, if the case involves allegations of dependency, neglect or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the circuit court awarding custody of such child, all prior orders of the juvenile session of the district court in conflict therewith shall be deemed cancelled. This section shall not work to deprive the circuit court of jurisdiction over cases filed in circuit court.

(7) The court of each county wherein a public offense, as defined in paragraph (a) of subsection (1) of this section, is committed by a child who is a resident of another county of this state, shall have concurrent jurisdiction over such child with the court of the county wherein the child resides, or the court of the county where the child is found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of his case, or, in its discretion may make an order transferring the case to the court of the county of his residence, or the county wherein the offense was committed, as the case may be.

(8) In the event a child who has not reached his eighteenth birthday commits a new offense while under the jurisdiction of the court or during the period of commitment, the court shall have exclusive, original jurisdiction of the new offense.

(9) Nothing in this chapter shall prevent the district court from holding a child in contempt of court to enforce orders previously issued by the court.

(10) Nothing in this chapter shall confer upon the district court jurisdiction over the actions of the cabinet in the placement, care, or treatment of a child committed to the cabinet; or to require the cabinet to perform, or to refrain from performing, any specific act in the placement, care or treatment of any child committed to the cabinet, provided the district court shall have jurisdiction to review a dispositional order as provided in KRS Chapters 620, 630, 635 and 645 and to make orders pursuant to KRS 635.090.

(11) In addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.

HISTORY: 1988 c 350, § 14, eff. 4-10-88
1986 c 423, § 20

Note: 610.010 contains provisions analogous to former 208.020, repealed by 1986 c 423, § 198, eff. 7-1-87.

610.060 Duty of court upon formal proceeding

If the court determines that a formal proceeding is required in the interest of the child or to determine the truth or falsity of the allegations against the child, a petition shall be required pursuant to KRS 610.020, and the court shall, when the child is brought before the court:

(1) Explain to the child and his parents, guardian, or person exercising custodial control their respective rights to counsel and, if the child and his parents, guardian, or person exercising custodial control are unable to obtain counsel, shall appoint counsel for the child and, unless specified to the contrary by other provisions of KRS Chapters 600 to 645, may appoint counsel for the parents, guardian, or person exercising custodial control;

(2) Explain the right against self-incrimination by saying that the child, parents, relative, guardian, or custodian may remain silent concerning the charges against the child, and that anything said may be used against the child;

(3) Unless limited by statute, explain the right to confront anyone who has accused the child and to cross-examine that person on the allegations made against the child;

(4) Advise the child and his parents, guardian, or person exercising custodial control of the right to appeal from a determination of the court;

(5) Advise the child that these rights belong to him and may not be waived by his parents, guardian, or person exercising custodial control;

(6) Unless otherwise exempted in KRS Chapters 600 to 645, a child and his parents or person exercising custodial control shall have a right to attend the hearing if such attendance will not unnecessarily delay the hearing; and

(7) The court may order a parent to pay for counsel for the child if the court determines that the parent has the ability to pay for such counsel.

HISTORY: 1988 c 350, § 18, eff. 4-10-88
1986 c 423, § 25

Note: 610.060 contains provisions analogous to former 208.060, repealed by 1986 c 423, § 198, eff. 7-1-87.

610.070 Hearings

(1) All cases involving children brought before the court shall be granted a speedy hearing and shall be dealt with by the court without a jury.

(2) The hearings shall be conducted in a formal manner, unless specified to the contrary by other provisions of KRS Chapters 600 to 645.

(3) The general public shall be excluded and only the immediate families or guardians of the parties before the court, witnesses necessary for the prosecution and defense of the case, the probation worker with direct interest in the case, such persons admitted as the judge shall find have a direct interest in the case or in the work of the court, and such other persons as agreed to by the child and his attorney may be admitted to the hearing. Witnesses shall be admitted to the hearing only for the duration of their testimony.

HISTORY: 1988 c 350, § 19, eff. 4-10-88
1986 c 423, § 26

Note: 610.070 contains provisions analogous to former 208.060, repealed by 1986 c 423, § 198, eff. 7-1-87.

610.330 Expungement of juvenile court records

(1) Any child who has been adjudicated as coming within the purview of KRS Chapters 630, 635, or 645, but not KRS Chapters 620 or 640, may petition the court for the expungement of his juvenile court record. He shall be informed of such right at the time of adjudication. The court on its own motion, or on the motion of a probation officer of the court, a representative of the cabinet or any other interested person, may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the court. Such petition shall be filed or such court order entered no sooner than two (2) years after the date of termination of the court's jurisdiction over the person, or two (2) years after his unconditional release from commitment to the cabinet for human resources or a public or private agency, except that the two (2) year period may be waived if the court finds that such extraordinary circumstances exist with regard to the petitioner as to make the waiver advisable.

(2) Upon the filing of a petition or entering of a court order, the court shall set a date for a hearing and shall notify the county attorney and anyone else whom the court or the child, his parents, relatives, guardian, or custodian has reason to believe may have relevant information related to the expungement of the record.

(3) The court shall order sealed all records in the petitioner's case in the custody of the court and any such records in the custody of any other agency or official, including law enforcement records, if at the hearing the court finds that:

(a) Since the termination of the court's jurisdiction or his unconditional release from commitment to the cabinet or a public or private agency, the person whose record is in question has not been convicted of a felony, and has not been adjudicated under KRS 610.010(1)(a); and

(b) No proceeding concerning a felony and no petition under KRS 610.010(1)(a) is pending or being instituted against him.

(4) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred and all index references shall be deleted and the person and court may properly reply that no record exists with respect to such person upon any inquiry in the matter.

(5) Copies of the order shall be sent to each agency or official named therein.

(6) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records, and only to those persons named in such petition.

HISTORY: 1988 c 350, § 38, eff. 4-10-88
1986 c 423, § 52

Note: 610.330 contains provisions analogous to former 208.275, repealed by 1986 c 423, § 198, eff. 7-1-87.

610.340 Confidentiality of juvenile court records

(1) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child or parent unless ordered by the court for good cause.

(2) The provisions of this section shall not apply to public officers or employes engaged in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the prosecution of the case.

(3) The provisions of this section shall not apply to employes of the cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes provided that the inspection of the records and the disclosure of the information contained therein is limited to that required in the investigation and the representation of the client in the case.

(4) No person shall disclose any record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.

(5) No person authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.

(6) No person not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.

(7) No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.

(8) As used in this section the term "KRS Chapters 600 to 645," includes any regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.

HISTORY: 1986 c 423, § 53, eff. 7-1-87

630.060 Information confidential

(1) Information supplied by the child to a court-designated worker during any process prior to the filing of the petition shall be deemed confidential and shall not be subject to subpoena or to disclosure without the written consent of the child.

(2) No complaint shall be received by the court-designated worker alleging habitual truancy unless an adequate assessment of the child has been performed pursuant to KRS 159.140(3), (4) and (6), unless it can be shown that the assessment could not be performed due to the child's failure to participate.

HISTORY: 1988 c 350, § 84, eff. 4-10-88
1986 c 423, § 114

635.040 Effect of adjudication by juvenile court

No adjudication by a juvenile session of district court shall be deemed a conviction, nor shall such adjudication operate to impose any of the civil disabilities ordinarily resulting from a criminal conviction, nor shall any child be found guilty or be deemed a criminal by reason of such adjudication.

HISTORY: 1986 c 423, § 127, eff. 7-1-87

Note: 635.040 contains provisions analogous to former 208.200, repealed by 1986 c 423, § 198, eff. 7-1-87.